IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/08/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.24 of 1995

Seethapathy .. Appellant

-Vs-

State represented by
Inspector of Police,
H6 Police Station,
Dr.Radhakrishnan Nagar
Circle, Madras.
(Cr.No.2005/92) .. Respondent

This criminal appeal is preferred under S.374 of Code of Criminal Procedure against the Judgment of the learned Sessions Judge, Madras, made in S.C.No.104 of 1994 dated 7.11.1994.

!For Appellant : Mr.R.S.Jeevarathinam

^For Respondent : Mr.S.Jayakumar
Additional Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
This criminal appeal is directed against the judgment of the learned Principal Sessions Judge, Madras made in S.C.No.104 of 1994 finding the appellant/accused guilty under Ss 302 and 324 of Indian Penal Code and awarding him life imprisonment and also a fine of Rs.2,000/- and in default to undergo two months R.I.
2. The appellant/accused stood charged under Ss 302 and 324 of I.P.C., alleging that he caused the death of his brother Raghupathy by stabbing him with a knife due to previous enmity; and that he also caused injury to one Ravindran who interfered at the time of the said occurrence at 6.30 P.M. on 29.10.1992 at Door No.117, Ennore High Road, Tondiarpet, Madras.
3. The short facts necessary for the consideration of this appeal can be stated as follows:
One Bhoopathy Naicker, father of the appellant/accused Seethapathy and his elder brother, the deceased Raghupathy, was running his steel factory by name Balaji & Company at No.117, Ennore High Road, Tondiarpet, Madras. The

appellant, his brother the deceased, their brother-in-law P.W.2 and some of the relatives were working in the said factory. During the relevant time, P.W.1 Ravindran was working as Accountant in the workshop. The families of the accused and the deceased Raghupathy were living in separate portions of the same house, situated in Samiyar Thottam of Tondiarpet. A few days prior to Deepavali which fell on 25th October, 1992, Raghupathy's wife P.W.4 Dhanalakshmi, had a wordy quarrel with Rukmani, the wife of the deceased. During the said quarrel, the deceased Raghupathy intervened and beat Rukmani with hand. At that time Rukmani's thali with string snapped and fell to the ground. Rukmani was angry that her husband did not come to her rescue and ask anything on her behalf. Despite the same, her husband kept quiet. Not satisfied with the said incident and the conduct of her husband, Rukmani left to her parents' house and refused to come back. Despite the efforts by the accused, she did not come to the matrimonial home. The above made the accused to wait for an occasion to take revenge against his elder brother. On 29.10.1992, at about 6.30 P.M., the accused was doing his work within the factory premises, when P.W.1 was looking after his accounts work. As usual, the deceased brought a gunny bag, unfolded the same, placed the metal oars contained therein and asked P.W.1 to weigh the same. The accused who came near the deceased, shouted at him that because of he, his family has become ruined and so saying, pushed the deceased Raghupathy with his hand. When Raghupathy fell down, the appellant took out a knife from his waist and stabbed him indiscriminatel y all over the body. When P.W.1 Ravindran interfered and asked the appellant not to do so, he received a cut injury on his right hand index finger. Hearing the cry of the victim and P.W.1, all the workers including P.W.2 Jayavel and P.W.3 Manoharan came to the scene of occurrence from the other part of the factory. The deceased who was lying in a pool of blood, was put in an auto rickshaw and was taken to the Government Stanley Hospital by P.W.3. P.W.6 Dr.Duraisamy admitted the injured Raghupathy at 7.05 P.M. The injured Raghupathy gave a statement to the Doctor that he was cut with a knife by a known person at 6.35 P.M., which was recorded by the Doctor.

4. P.W.1 Ravindran went to R.K.Nagar Police Station and gave Ex.P1 complaint at 7.00 P.M. on 29.10.1992. The said complaint was recorded by a constable in the presence and under the guidance of P.W.11 Inspector of Police. On the basis of Ex.P1 complaint, P.W.11 registered a case in Crime No.2005/92 for the offences under Ss 323, 324 and 307 of I.P.C. against the appellant/accused and prepared Ex.P11 First Information Report. The First Information Report was despatched to the concerned Magistrate. P.W.11 recorded the statement of P.W.1 and sent him to the hospital with a memo. At about 9.25 P.M., P.W.6 the Doctor treated P.W.1, found a cut injury laceration and abrasion on the right hand index finger and recorded the same in the Accident Register. The copy of the said accident register is Ex.P4. The Inspector recorded the statements of P.W.3 Manoharan, Venkatesan and Durairaj at the hospital. P.W.11, the Inspector, after examining P.W.6 Dr. Duraisamy, proceeded to the scene of occurrence at 11.00 P.M., made an inspection and prepared Ex.P2 Observation Mahazar and Ex.P12 rough sketch in the presence of the two witnesses viz. P.W.3 Manoharan and P.W.5 Hari. At about 12.15 A.M. on 30.10.1992, he caused photographs to be taken and seized M.O.5 bloodstained cement plaster slab, M.O.6 cement plaster slab without bloodstain and M.O.7 bloodstained ever silver bucket under Ex.P13 mahazar. M.O.2 bloodstained

shirt of P.W.3 Manoharan and M.O.3 bloodstained Lunghi of P.W.3 were recovered by the Investigation Officer under Ex.P14 mahazar. He recorded the statement of the witnesses. The injured Raghupathy, who was under treatment in the hospital, died at 12.40 A.M. P.W.7 Dr.Venkatachalam who was attending the victim till his death, despatched Ex.P5 death intimation report to the police. At about 1.00 A.M. on 30.10.1992, the Investigation Officer received a telephonic message from the hospital that the victim Raghupathy died by 12.40 A.M., and hence, he altered the case to one under S.302 of I.P.C., prepared Ex.P15 Express First Information Report and despatched to the concerned court. After receiving the written death intimation from the hospital at 6.45 A.M. on 30.10.1 992, the Investigation Officer proceeded to the hospital, conducted the inquest on the dead body between 9.00 and 11.30 A.M. and prepared Ex.P16 inquest report. He recorded the statement of the inquest witnesses, including Bhoopathy Naicker and P.W.4 Dhanalakshmi. Following the inquest, he despatched the dead body for postmortem through a constable with Ex.P6 requisition.

5. P.W.8 Dr.Sundaramoorthy on receipt of Ex.P6 requisition, commenced and conducted the autopsy between 11.50 A.M. and 12.50 P.M. The Doctor noticed the following injuries on the body of the deceased.

1) An horizontal sutured wound 2 cms. long over left temple in front and above ear lobe. ON REMOVAL OF SUTURE: The wound is seen to be muscle deep and directed medially.

2) A vertical sutured wound 1.5 cm. long just below the left ear lobe. On removal of suture the wound is seen to be muscle deep and directed downwards.

3) A superficial horizontal incised wound 1 cm. long over midline of front of neck. Wound is skin deep.

4) An horizontal sutured wound 2 cms. over midline of front of neck just below No.3. Wound is muscle deep. Both wounds are directed from right to left.

5) An oblique sutured wound 6 cms. long over upper third of front of left arm. The wound is muscle deep and directed downwards and laterally.

6) An horizontal 11 cms. long sutured wound over left chest 3 cms. below clavicle.

7) An oblique sutured wound 5 cms. long over the 5th left intercostal space and 6th rib level of chest.

8) An oblique sutured wound 5 cms. long over the left chest or the 6 th rib close to left sternal border.

9) An oblique sutured wound 7 cms. long over the left chest on the 8 th intercostal space and 9th rib.

10) An oblique sutured wound 1 cm. long over the left lateral aspect of chest at 9th rib level. The wound is muscle deep and seen directed upwards and laterally.

11) An oblique sutured wound in the anterior aspect of right chest 2 cms. below the horizontal sutured wound No.18. The wound is muscle deep and directed downwards and medially.

12) An oblique sutured wound 2 cms. long over the right lateral aspect of chest on the 9th rib level.

13) An oblique sutured wound 2 cms. long seen over the left upper abdomen 2 cms. above and lateral to umbilicus.

14) An oblique sutured wound 3 cms. long seen in the left upper abdomen close to costal margin.

15) An oblique sutured wound 3 cms. long over left abdomen just below and lateral to umbilicus.
16) An oblique sutured wound 2 cms. long over the left abdomen lateral to injury No.15.
17) A slightly curved 26 cms. long sutured wound seen over the left chest along the 8th intercostal space. (Surgical)
18) A slightly curved 18 cms. long sutured wound seen over the right chest along the 8th intercostal space. (Surgical)
19) A vertical sutured wound 22 cms. long over the right side of abdomen close to midline extending above and below umbilicus. (Surgical)
P.W.8 the Doctor has given Ex.P8 postmortem report. The Doctor has opined that the victim has died of haemorrhage and shock due to multiple stab injuries.
6. P.W.11, the Investigation Officer arrested the accused at 4.00 P.M. on 2.11.1992 near New Bridge, Tondiarpet Railway Station in the presence of P.W.9 Balan and another witness. Pursuant to the confessional statement by the accused, the Investigation Officer recovered M. O.1 bloodstained knife and M.O.4 bloodstained shirt produced by him, under Ex.P10 Mahazar at 5.30 P.M. in the presence of the said witnesses. M.O.1 bloodstained knife was shown to P.W.8, the Doctor, and his statement was recorded. The arrested accused was sent to the concerned Judicial Magistrate for remanding him to judicial custody. On Ex.P17 requisition made by the Investigation Officer, the Judicial Magistrate sent all the material objects and the viscera for chemical analysis under Ex.P18 communication. On completion of the investigation, P.W.11 laid the charge sheet on 27.4.1993.
7. In order to prove the said charges, the prosecution has examined P.Ws.1 to 11, marked Exs.P1 to P19 and produced M.Os.1 to 7. When the accused was questioned under S.313 of Code of Criminal Procedure, he stated that the statements given by the prosecution witnesses were false. No defence witness was examined. After hearing both sides, the learned Sessions Judge found the appellant/accused guilty under Ss 302 and 324 of Indian Penal Code and sentenced him, as stated above. Hence, this appeal.
8. What is challenged herein is the judgment of the Court below finding the appellant/accused guilty under Ss 302 and 324 of I.P.C. and sentencing him to undergo life imprisonment and also to pay a fine of Rs.2,000/-.
9. Arguing for the appellant, the learned Counsel Mr.R.S. Jeevarathinam would submit that the prosecution had thoroughly suppressed the genesis of the occurrence and have portrayed an untrue version before the court, and the same was patent from the evidence on record; that the prosecution has thoroughly failed to prove the motive attributed to the accused for committing the offence; that it is pertinent to note that P.Ws.1 to 4 have given as many number of versions as possible regarding the motive, and hence, it would be very difficult to come to a conclusion that the same was the basis for the occurrence; that P.W.4, the wife of the deceased has turned hostile, and the same has fatally affected the prosecution case; that the statements of those witnesses examined at the time of investigation would clearly reveal that there was no motive at all; that the lower court has wrongly relied on the evidence of P.Ws.1 and 2, the so-called eyewitnesses to record a conviction; that the Apex Court has held that under such circumstances, when the eyewitnesses come with different and inconsistent

versions, it would be very unsafe to rely on such evidence to convict an accused; that from the available evidence, it would be clear that the so-called eyewitnesses came to the occurrence place only after the incident was over; that there are two different versions about the occurrence viz. one during the investigation and the other during the trial, and hence, the prosecution cannot stand the test of law; that the overt acts attributed to the accused had not been established by the evidence adduced by the prosecution; that the prosecution has not come forward with any explanation why Bhoopathy Naicker, the father of the accused and the deceased, was not examined; that P.Ws.1 and 2, who have not witnessed the occurrence, have come forward to oblige the said Bhoopathy Naicker; that there was a delay in lodging the F.I.R., which would not rule out the suspicion that the prosecution has come with a false story; that the medical evidence did not support the prosecution version at all; that there are so many doubts and suspicious circumstances attendant on the confession of the accused leading to recovery; that it remains to be stated that the accused had no prior enmity with the prosecution group; that subsequent to the quarrel, which according to the prosecution, was the motive, there was a panchayat constituted, and the parties were pacified, and thus, there was no reason for any enmity or ill-will for the appellant/accused to attack his brother. Added further the learned Counsel that even as per the prosecution case, the attack was not pre-planned, and hence, the lower court should not have recorded a finding that the appellant/ accused was guilty under S.302 of IPC; that the lower court has not carefully considered the entire evidence, which was thoroughly unsatisfactory and inconsistent, and in view of the same, the lower court should have given the benefit of doubt to the accused, which would entitle him for an acquittal, and hence, the judgment of conviction and sentence passed by the trial court has got to be set aside, and the appellant be acquitted.

10. Arguing for the sustenance of the impugned judgment, the learned Additional Public Prosecutor Mr.S.Jayakumar would submit that the prosecution has placed sufficient material to prove the motive for the appellant-accused to commit the offence; that from the evidence of P.Ws.1 and 2, it would be abundantly clear that they were present at the time of the occurrence; that they have witnessed the whole incident; that it was the accused who pushed the deceased down and stabbed him with M.O.1 knife indiscriminately; that immediately the injured was taken to the hospital where he has given a statement to the Doctor, who admitted him, stating all the material facts connecting the accused; that P.W.1, who went to the Police Station, has given the complaint within half an hour from the time of occurrence fully narrating the whole incident, on the strength of which, P.W.11, Inspector of Police registered a case under Ss 323, 324 and 307 of I.P.C. and has despatched the F.I.R. immediately to the concerned Court; that the injured Raghupathy succumbed to the injuries at 12.40 A.M., and on the information, the case was converted to one under S.302 of IPC; that following the inquest, the dead body was sent for postmortem; and that P. W.8, the Doctor, who conducted the autopsy, has categorically opined that the deceased has died of haemorrhage and shock caused by multiple stab injuries. Added further the learned Additional Public Prosecutor that the accused on arrest, has given a confessional statement which led to the recovery of M.O.1 bloodstained knife and M.O.4 bloodstained shirt, which is the strong evidence for the prosecution; that the reports received on chemical analysis of the material

objects recovered, would clearly indicate that M.O.1 bloodstained knife, M.O.2 bloodstained shirt, M.O.3 bloodstained lunghi, M.O.4 bloodstained shirt, M.O.5 bloodstained cement plaster and M.O.7 bloodstained ever silver bucket contain the same group of blood viz. "A" Group, which would also be indicative of the nexus between the accused and the crime, and thus, it is a case where the prosecution has placed evidence in abundance pointing to the guilt of the accused, and hence, the judgment of the lower court has got to be confirmed, and the appeal be dismissed.

10. The appellant herein faced two charges one under S.302 of I.P.C. and the other under S.324 of I.P.C., wherein he was found guilty and sentenced to imprisonment as mentioned above. Concededly, the appellant herein and the deceased Raghupathy are the sons of one Bhoopathy Naicker through his first wife, and they were working in a ever silver factory, run by their father and situate in Door No.117 Ennore High Road, Tondiarpet, Madras, wherein the occurrence has taken place. P.W.1 Ravindran was working as an Accountant in that factory, while P.W.2 Jayavel, the son-in-law of Bhoopathy Naicker was also working in the said factory. The appellant and his brother, the deceased were living in separate portions of the same house situate in Samiyar Thottam of Tondiarpet.

11. As per the charges levelled against the appellant, the occurrence took place at 6.35 P.M. on 29.10.1992 at the ever silver factory of Bhoopathy Naicker situated at Door No.117, Ennore High Road, Tondiarpet, Madras. P.W.1, who was working as an Accountant in the said factory, has clearly deposed that at the time of occurrence, he was present; that the victim brought a gunny bag containing metal ores and asked him to weigh the same, and at that time, the accused came near him shouting "because of him, his family was ruined", and so saying, the accused beat the deceased with hand; that the deceased fell down; and that immediately, the accused took a knife and stabbed him all over the body. It is pertinent to note that P.W.1 was an independent witness. It cannot be stated that he was either interested in the family of the deceased or inimical to the appellant. It is not disputed by the appellant's side that he was employed in the factory during the relevant time. P.W.2, who is examined as another eyewitness, has clearly corroborated the evidence of P.W.1. It remains to be stated that P.W.2 is the brother-in-law of both the appellant and the deceased. Despite the full cross examination of the said witnesses, nothing worth mentioning has been brought about in support of the defence. But the evidence of both the eyewitnesses remains unshaken. The court is of the view that their evidence is natural, reliable and trustworthy. At this juncture, it has to be necessarily pointed out that even by a suggestion put to P.W.1, the appellant-accused has admitted his presence at the time and in the place of occurrence, as alleged by the prosecution. The lower court was perfectly correct in rejecting the theory advanced by the defence stating that there was a fight between the appellant and the deceased, and in that course, the deceased fell down on the small pieces of ever silver sheets having sharp edges and sustained the fatal injuries, in view of the medical evidence to be discussed infra.

12. During investigation, P.W.11, Inspector of Police after conducting inquest, as found under Ex.P16, has sent the dead body for postmortem with Ex.P6. P.W.8 Dr.K.Sundaramoorthy, who conducted the postmortem, has given evidence stating that he has issued Ex.P8 postmortem certificate and has also opined that the injured died of haemorrhage and shock

due to multiple stab injuries. It is pertinent to point out that M.O.1 knife was shown to him, and he has also opined that the multiple stab injuries found in the dead body, would have been caused by a weapon like M.O.1. Thus, this part of the medical evidence stands in full corroboration of the ocular evidence adduced by the prosecution.

13. Apart from the above, the deceased Raghupathy was admitted by P.W.6 Dr.Duraisamy at 7.05 P.M. on 29.10.1992 i.e. immediately after half an hour from the time of occurrence. It could be well seen from the evidence of P.W.6 that the victim at the time of the said admission was conscious, and he has stated to the Doctor that he was stabbed by a known person at 6.35 P.M. in a steel factory situated at Door No.117, Ennore High Road, Tondiarpet, Madras. At this juncture, it has to be pointed out that the said statement was made by the deceased to P.W.6 Doctor speaking about the time and place of occurrence, and he has also whispered that he was stabbed by a known person. This statement given by the deceased would be a strong piece of evidence pointing to the nexus of the accused to the crime. 14. According to the prosecution, P.W.1 sustained simple injuries at the time of occurrence, when he made an attempt to rescue the deceased. The prosecution has also adduced evidence through P.W.6 Doctor that he examined P.W.1 at 9.25 P.M. the very day and has found simple injuries on his right thumb, and the accident register in that regard is marked as Ex.P4. Pursuant to the confessional statement by the accused at the time of his arrest on 2.11.1992 in the presence of two witnesses, the Investigation Officer has recovered M.O.1 knife and M.O.4 shirt worn by the accused, from the appellant/accused under Ex.P10 mahazar. One of the attesting witnesses to the said mahazar was examined as P.W.9 Balan, whose evidence remains unshaken. From the report of the Chemical Analyst, marked as Ex.P19, it could be well seen that the blood group found in M.O.1 bloodstained knife and M.O.4 bloodstained shirt worn by the accused tally with the other bloodstained material objects. Thus, the court is able to see overwhelming evidence, through and by which the prosecution has proved the guilt of the accused beyond reasonable doubt, and hence, the lower court was perfectly correct in concluding that it was the appellant, who caused the death of Raghupathy and also caused simple injuries to P.W.1 Ravindran. In view of the available evidence, as narrated above, the court is unable to accept or appreciate any one of the grounds put forth by the appellant herein.

15. From the evidence of P.W.2, the brother-in-law of the deceased and the appellant and P.W.4 the wife of the deceased, who turned hostile, it is crystal clear that there was an incident of wordy quarrel, a few days prior to Deepavali i.e. on 25.10.1992, wherein P.W.4 and Rukmani the wife of the appellant, were involved; that at that time, the deceased intervened on behalf of his wife; that in the midst of quarrel, he beat the wife of the appellant and her sister; and that the Thali of Rukmani fell down. According to the prosecution, the wife of the appellant left for her parents' house, and despite request by the appellant, she refused to come back, and the appellant was aggrieved over the same, and that was the motive for the appellant to attack the deceased at the time of occurrence. But, the available evidence would go to show that a panchayat was constituted, wherein the appellant was pacified, and subsequently, the appellant and the deceased used to speak with each other, as to the matters pertaining to the factory. But, in the instant case, in view of the clinching and clear evidence of the occurrence, spoken to by the eyewitnesses, the motive attributed by the prosecution does not assume

significance. The evidence on record would indicate that the act of the accused was not a pre-planned or pre-meditated one. Even in Ex.P1 complaint given by P.W.1, who was one of the eyewitnesses to the occurrence, it is stated that there was a wordy quarrel between the deceased and the accused, which preceded the attack made by the appellant. Hence, from the facts and circumstances of the case, it would be clear that the appellant has attacked the deceased without pre-meditation, upon a sudden quarrel. However, he has caused the death by attacking the deceased with a knife, and hence, it should be well within his knowledge that there was likelihood by such act to cause the death of the deceased. Thus, the act of the accused would squarely fall under S.304 Part I of the Indian Penal Code. Therefore, the judgment of the lower court has to be set aside, and the accused is found guilty under S.304 Part I of I.P.C., and a sentence of 10 years R.I. has to be imposed on him.

16. In the result, this Criminal Appeal is partly allowed. The judgment of the court below is set aside, and the appellant/accused is found guilty under S.304 Part I of I.P.C. A sentence of 10 years R.I. is awarded. The learned Sessions Judge shall take steps to commit the appellant-accused to prison to undergo the remaining period of sentence.

Index: Yes (P.S.M.J.) (M.C.J.)
Internet: Yes 19-8-2002
To:
1) The Principal Sessions Judge, Madras.
2) The XV Metropolitan Magistrate, George Town, Madras.
3) The XV Metropolitan Magistrate, George Town, Madras,
through The Chief Metropolitan Magistrate, Egmore,
Madras.
4) The Superintendent of Central Prison, Vellore.
5) The Public Prosecutor, Madras.
6) The District Collector, Madras.
7) The Director General of Police, Chennai 4.
8) The Inspector of Police, H6 Police Station, Radhakrishnan
Nagar Circle, Madras (Crime No.2005/92).

nsv/
P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.
C.A.No.24 of 1995

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